

REMARKS

These remarks are responsive to the Office Action mailed July 1, 2010 ("Office Action"). The Office Action has been received and carefully considered. Reconsideration of the current objections/rejections in the present application is also respectfully requested based on the following remarks. Claims 2-8, 10, 12-14, and 27-37 are currently pending in the present application. All of the claims stand rejected. The claims have been amended as indicated above. Claims have been cancelled as indicated above without waiver or disclaimer. No new matter has been added. Reconsideration of the current rejections in the present application is respectfully requested based on the following remarks.¹

The Claims Are Allowable Over Ball

The Office Action rejects claims 1-3, 5, 8-12, 14-15, 17, 20-24 and 26 under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Pat. Pub. No. 2002/0050493 to Ball et al. ("Ball"). Additionally, the Office Action rejects claims 4, 6-7, 16, and 18-19 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Ball and claims 13 and 25 as allegedly being unpatentable over Ball in view of U.S. Patent No. 6,082,944 to Bachmann, et al. ("Bachmann").

An Anticipatory Reference Must Disclose All Claim Limitations As Recited In The Claim

It is well understood that for a proper anticipation rejection, all claim limitations must be taught or suggested by the prior art and the claim elements must be arranged or combined in the same way as recited in the claim. This baseline standard for anticipation under 35 U.S.C. §102

¹ As Applicants' remarks with respect to the Examiner's rejections are sufficient to overcome these rejections, Applicants' silence as to assertions made by the Examiner in the Office Action or certain requirements that may be applicable to such rejections (e.g., assertions regarding dependent claims, whether a reference constitutes prior art, whether references are legally combinable for obviousness purposes) is not a concession by Applicants that such assertions are accurate or such requirements have been met, and Applicants reserve the right to analyze and dispute such in the future.

was reiterated by the Federal Circuit in *Net Moneyin v. Verisign*, 88 USPQ2d 1751, 1759 (Fed. Cir. 2008), holding:

We thus hold that unless a reference discloses within the four corners of the document not only all of the limitations claimed but also all of the limitations arranged or combined in the same way as recited in the claim, it cannot be said to prove prior invention of the thing claimed and, thus, cannot anticipate under 35 U.S.C. § 102.

Furthermore, a “reference must clearly and unequivocally disclose the claimed [invention] or direct those skilled in the art to the [invention] without *any* need for picking, choosing, and combining various disclosures not directly related to each other by the teachings of the cited reference.” *Sanofi-Synthelabo v. Apotex, Inc.*, 89 USPQ2d 1370, 1375 (Fed. Cir. 2008) (emphasis and alterations in original) (quoting *In re Arkley*, 172 USPQ 524 (CCPA 1972)). As such, Applicants respectfully submit that Ball fails to meet this standard and hence fails to anticipate the claimed embodiments.

New Claims 27-37 Are Allowable Over the Cited Art

Applicants have added new claims 27-37. No new matter has been added and the claim limitations for these new claims are supported by the specification. Claim 27 incorporates elements of now cancelled claim 1 and recites a combination of a lever ring and a closure layer that is sealed by a surrounding edge portion to the lever ring. The closure layer is recited as being metal foil. This claim incorporates elements previously found in at least cancelled claims 1, 23, and 24. Dependent claims 28-37 are substantially based upon cancelled dependent claims 9 and 15-26. Applicants respectfully submit that these new claims are allowable for at least the reasons given below. Accordingly, indication of allowance of these claims is respectfully requested.

The Claims Are Not Anticipated by Ball

Applicants note that the Office focuses on the distinction between a lid and a lid ring. When one of ordinary skill in the art reads the claim term “lever ring” (which Applicants note is a synonym for a “lid ring” as recited in new claim 27), that person will read and understand that the inner portion is open. One of ordinary skill in the art would not make the lever ring or lid ring a starting point to potentially add another panel portion.

In fact, Ball has only a part opening and still provides a substantial size of panel portion. Ball reference has no lid ring or lever ring. While the Office repeats the figures on page 3 of the Office Action (from the previous action) which are excerpted from the Ball reference, these figures show only one part of the Ball reference and not the full lid. A proper comparison regarding a lid would require comparing the full lid, as claimed in claim 27 in for example, with the full lid as shown in Ball.

Ball has a slanted portion surrounding the small opening, but it does not have a surrounding inclined web that extends at an angle different from zero. A surrounding seam is a fully surrounding seam. A surrounding flat web that is inclined, as recited in both claims 2 and 27, is surrounding with respect to the whole lid ring. In contrast, Ball shows an asymmetrically placed opening. It has no surrounding inclined web as recited.

Ball reference 46 in Figure 13 is not surrounding with respect to the lid ring. In ¶ 37 of the Office Action (on pages 10-11), the Office offers a comparison to a car regarding wheels and engines. Applicants respectfully submit that the Office’s comparison of a car having an engine and a wheel is not persuasive. Merely because a car has an engine would not exclude the presence of wheels and vice versa. Regarding the car as a reference, Applicants respectfully submit a more appropriate analogy may be the front screen or window of a car. Unless the front

window placed in its opening, seated, and sealed, the front of the car is open. This front opening would have a surrounding sealing seat for placing this window. The surrounding sealing seat is potentially some sort of sheet strip that has a curvature, but has a receiving groove that is able to receive the window. The comparison is that the window is a cover layer in claim 27 and the lid ring is the surrounding seat for the window. One would not interpret the surrounding seat of the window to be the starting point of a full panel portion made of sheet metal. The claim does not read on this. The claim is not claiming at least a flat web that is surrounding, but does recite the lever ring that has this flat web and within the term of lever ring, one of ordinary skill in the art understands that the center of this ring is open. It is open to full extent and does not have a part portion of a panel remaining as is the case in Ball.

To state the above in different terms, Applicants submit that the Office is correct that having a car with engine and wheels in prior art would anticipate a more general claiming of a car having an engine. This is however not what is claimed and Applicants are traversing the comparability of the given example. Applicants are not primarily addressing the flat web, but are focusing on the technical term of a lever ring that implicitly has a continuous flat web. Applicants respectfully submit the following comparison with respect to ¶ 39 on page 11 of the Office Action.

Beverage cans usually have a lid that is closed with a panel made from sheet metal. There is no membrane that is sealed to an outer ring (the continuous surrounding flat web). There is a surrounding groove and a central panel. If a person uses this lid and pierces a small hole from the bottom in the center of this panel, this would be an opening. It is a very small opening, but according to the Office's arguments, it is an opening as such. This opening or "aperture," as referred to by the Office, can be considered as something that has an upwards

slanted ring, as the piercing from the bottom would, in technical terms, provide an upwards slanted ring that is in fact surrounding the hole, but not surrounding the lid ring, as a substantial amount of panel portion is still there. Not naming the size of the opening, one of ordinary skill in the art would properly applied this to the wording of the claim.

Applicants respectfully submit that the Office is failing to give the claim terms their plain and ordinary meaning as understood by one of ordinary skill in the art. For example, the Office alleges that the flat web is at least at the beginning of a panel portion. Applicants submit that this is not true. The flat web is part of the lever ring and the technical term of the lever ring disclaims a central panel of sheet material that is the same material used for the lid/lever ring. To return to ¶ 39 as discussed above, the Office appears to be alleging that the continuous surrounding flat web is the beginning of a regular panel of a beverage can. Applicants respectfully submit that this is incorrect.

Applicants have amended claims 2 and 27 to include the term “surrounding”. The surrounding concerns the flat web, the seal, and the groove. Surrounding means continuous around the whole lid ring. Applicants submit that Ball’s ring in Figures 12, 13 is not surrounding with respect to the lid ring. It is surrounding with respect to the offset opening, but the opening leaves a substantial portion of a metallic panel.

In ¶ 38, on page 11 of the Office Action, the Office alleges that the claims do not recite a “countersink groove.” The countersink the Office alleges is missing is named a “continuous surrounding groove” in new claim 27. The present specification describes customary designs of lever rings, *see, e.g.*, page 1, line 10. Four examples are given. No specific mention is made as to an area that is open, as Applicants respectfully submit that this is the standard understanding of one skilled in the art in the packing business of metal cans and lids.

In order to maintain an anticipatory rejection under 35 U.S.C. §102, a reference must teach each and every element of the claim. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) (a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference). “The identical invention must be shown in as complete detail as is contained in the . . . claim.” MPEP § 2131 (quoting *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989)). Therefore, in view of the preceding remarks, the Examiner has failed to present a *prima facie* case of anticipation for at least independent claims 2 and 27 and Applicants respectfully request the withdrawal of the anticipation rejection.

The Dependent Claims Are Allowable Over the Cited Art

The cancellation of claims 1, 9, 11, and 15-20 renders the rejection thereof in the Office Action moot. Pending dependent claims 3-8, 10, and 12-14 are dependent on independent claim 2. As such, these claims include all of the limitations of independent claim 2. Further, Ball fails to teach or suggest any of the additional recitations of the dependent claims 3-8, 10, and 12-14. Regarding claim 13, the addition of Bachmann fails to cure the deficiencies of Ball as noted above. Accordingly, these claims are allowable for at least the reasons discussed above with respect to independent claim 2. Additionally, these claims recite additional features which are neither taught nor disclosed by Ball. Likewise, though differing in scope, dependent claims 28-37, which depend from independent claim 27, recite similar elements and are allowable for at least the same reasons as dependent claims 3-8, 10, and 12-14.

Applicants respectfully request the withdrawal of the anticipation and obviousness rejections of claims 3-8, 10, and 12-14.

The Claims Are Allowable Over Newly Submitted Art

Applicants have submitted an IDS (on November 1, 2010) containing 2 references which have recently come to Applicants' attention. The two references are U.S. Patent 5,725,120 to Ramsey, et al. ("Ramsey") and EP 0 683 110 A1 to the same. Both the US and the EP documents claim priority to the same United Kingdom application and have common inventors. Applicants submit the below comments to assist in the Office's consideration of these references.

The below arguments focus on the US patent (the EP application's disclosure being similar). Ramsey discloses several embodiments, including an embodiment shown in Figures 6 and 7 which discloses a lid ring 36. A sealing portion 39 is also shown and has a slanted upwards ring that is surrounding. There is a sealing zone that seals the membrane 31 to this lid ring. See reference #34 and col. 4, lines 44-45. Figures 6 and 7 are described in column 4, line 56 to column 5, line 11. The example shown in Figures 6 and 7 has an inclination of the "peripheral flange 34", which is the inclined portion to which a sealing is made. Ramsey discloses this to be a "peelable bond." Col. 5, line 2. As angle A (shown in Figure 1, for example) has an inclination of about 120° with respect to the side wall 40 suggested, this is about 30 degrees as measured to the horizontal plane. A central panel is mentioned that is bulging or deforming due to the material that is used for this panel. See col. 3, lines 31-32. The material is according to Figures 1 and 2, a plastics lamination barrier. See col. 3, lines 38 to 43. Ramsey also discloses this in col. 2, lines 16 to 24. For example, in line 24, the elastic expansion is disclosed to be a substantial limitation of prior art.

This elastic expansion is only provided by plastics material of certain properties such as Polypropylen, Polyethylen, or other such devices and materials disclosed in column 6, line 11 to 24. However, Applicants submit that what is not shown in this prior art is a closure that is a

combination of lid and lid ring having a metal foil as closure layer, such as recited in claim 27.

Ramsey's metal foil is aluminum foil that included in laminated layers. *See* col 3, lines 38 to 42. and Fig. 11.

The bonding is used in combination with the laminated plastics material and is not explicitly shown in its size. Claim 27, for example, recites"

onto the surrounding flat web the surrounding edge portion of the closure layer is affixed by sealing along a sealing strip extending circumferentially and having a substantial width on the flat web, this width being more than half of a width of the flat web, the flat web extending at an angle differing from zero with respect to a plane of the closure layer affixed by said sealing.

This element recites a certain size, taken from cancelled claim 24, that has a relation to the width of the surrounding slanted web. In combination, the closure layer of a metal foil and the at least half of the slanted web makes this closure superior over the prior art. The claim combination has both mechanical strength of a large membrane (closure layer) and superior bonding due to its size on a slanted seal surface. This provides additional temperature resistance for processing a filled food stuff under high temperature. This is also called retorting and not all retorting devices have counter pressure to counteract an existing and developing inner pressure of the closed can, as would appreciated by one of ordinary skill in the art. This claim therefore provides a superior combination of lid ring and closure layer that are sealed together.

Therefore, Applicants respectfully submit that the '120 fails to at least anticipate the claimed embodiments.

The Claims Are Allowable

Applicants respectfully submit that all pending rejections have been overcome and the withdrawal thereof is respectfully requested. Therefore, Applicants submit that all claims are in a condition for allowance and indication thereof is respectfully requested.

CONCLUSION

In view of the foregoing, it is respectfully submitted that the present application is in condition for allowance, and an early indication of the same is courteously solicited. The Examiner is respectfully requested to contact the undersigned by telephone at the below listed telephone number, in order to expedite resolution of any issues and to expedite passage of the present application to issue, if any comments, questions, or suggestions arise in connection with the present application.

To the extent necessary, a petition for an extension of time under 37 CFR § 1.136 is hereby made.

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-0206, and please credit any excess fees to the same deposit account.

Respectfully submitted,

HUNTON & WILLIAMS LLP

Dated: 11/1/10

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